IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.731 OF 2004

IN

WRIT PETITION NO.322 OF 2003

...

Mr.M.S.Kadam ...Appellant

v/s.

Union of India and anr. ...Respondents

...

Mr.N.M.Ganguli for the Appellant.

Ms.Bharti Mahant for Respondent/Union of India.

...

**CORAM: D.K.DESHMUKH** &

J.H.BHATIA, JJ.

**DATED:** 30TH AUGUST, 2007

**P.C.:**

1. By this Appeal the Appellant challenges the order dated 13-9-2004 passed by the learned single Judge of this Court in Writ Petition No.322 of 2003. By that order the learned single Judge set aside the award passed by the Industrial Tribunal and has remitted the matter back to the Tribunal to dispose of the matter in accordance with the directions issued by the learned single Judge.

2. The relevant facts are , the Appellant was in the service of the Respondent. A departmental inquiry was held against him. The inquiry officer held that the Appellant/workman is not guilty of the misconduct. The disciplinary authority, however, disagreed with the conclusion of the inquiry officer. A show cause notice was given to the Appellant and the disciplinary authority made an order dismissing the Appellant from service. In the departmental appeal the order of the dismissal was set aside and in stead the punishment of compulsory retirement was imposed. A reference was made to the Industrial

Tribunal, being Reference No.CGII-2/155 of 1999. That reference was decided by the Industrial Tribunal by order dated 19th August, 2002. The Industrial Tribunal held that there was no inquiry held. The employer has not led any evidence before the Industrial Tribunal, and therefore the Industrial Tribunal directed reinstatement in service of the Appellant with full backwages. The learned single Judge by the order passed in the Writ Petition filed by the Respondent held that if the tribunal comes to the conclusion that there was no inquiry held, then the tribunal was under a duty to give an opportunity to the Employer to lead evidence. That opportunity has to be given by the Tribunal, only after first recording a finding that there is no proper inquiry held, and therefore, the learned single Judge on finding that the Tribunal has not followed the procedure properly remitted the proceedings back to the Tribunal. We have been informed that as there was no interim stay granted in this Appeal, after remand the proceedings have proceeded before the Industrial Tribunal and the matter is fully heard and it has been reserved for judgment.

3. The learned Counsel appearing for the Appellant

submitted that the Appellant had not challenged the validity of the inquiry. It was also not his case that proper inquiry was not held and therefore, according to him, there is no question of the employer being given an opportunity to lead evidence. He also submitted that it is clear from the order of the Tribunal that the employer was given an opportunity to lead evidence, but the employer did not lead any evidence saying that the employer does not want to lead evidence.

4. Perusal of the record shows that the order of reinstatement and back wages has been made by the tribunal in favour of the Appellant after recording a finding that no proper inquiry was held by the employer. This finding has been recorded only in the final order that is passed by the Tribunal and order of reinstatement has been made only on the basis of this finding and the fact that the employer has not led the evidence. The procedure sanctioned by the law is that if the Tribunal comes to the conclusion that no proper inquiry has been held, it has to record a finding and then to give an employer an opportunity to the employer to lead the evidence and thereafter to decide the matter on merits. It is

apparent from the order of the Tribunal that this procedure has not been followed by the Tribunal in this case. In our opinion, therefore, the learned single Judge was perfectly justified in remanding the proceedings back to the Tribunal. One more aspect, in our opinion, that is relevant for not interfering with the order impugned in the Appeal is that now the proceedings after remand have been completed.

5. Taking overall view of the matter, we see no reason to interfere with the order impugned. Appeal is, therefore, disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3710 OF 2004

IN

APPEAL NO.731 OF 2004

IN

WRIT PETITION NO.322 OF 2003

...

Mr.M.S.Kadam ...Appellant

v/s.

Union of India and anr. ...Respondents

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Mr.N.M.Ganguli for the Appellant.

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**CORAM: D.K.DESHMUKH** &

J.H.BHATIA, JJ.

**DATED:** 30TH AUGUST, 2007

**P.C.:**

In view of the order passed in Appeal, motion does not survive for consideration. Disposed of as such.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)